

**EXHIBIT 37**

**DOCUMENT SOUGHT TO BE  
FILED UNDER SEAL**

**MAO DECLARATION  
OPPOSITION TO SUMMARY  
JUDGMENT**

**From:** Ryan Sila  
**Sent:** Tuesday, November 8, 2022 12:05 AM  
**To:** Arakaki, Lori; Alex Frawley; WAAGOOGLTEAM@LISTS.SUSMANGODFREY.COM  
**Cc:** FIREBASE-WFGE  
**Subject:** RE: Rodriguez: Google's Suppl. Interrogatory Response Set Three and Ma Verifications

Thanks so much, Lori. Yes, this dispute is resolved.

---

**From:** Arakaki, Lori <LArakaki@willkie.com>  
**Sent:** Monday, November 7, 2022 11:53 PM  
**To:** Ryan Sila <RSila@susmangodfrey.com>; Alex Frawley <AFrawley@susmangodfrey.com>; WAAGOOGLTEAM@LISTS.SUSMANGODFREY.COM  
**Cc:** FIREBASE-WFGE <FIREBASE-WFGE@willkie.com>  
**Subject:** RE: Rodriguez: Google's Suppl. Interrogatory Response Set Three and Ma Verifications

**EXTERNAL Email**

Thanks, Ryan. Screen 2 is a web page that goes to the same page as #3 below and would be covered by Google's production on that disclosure. Screen 3 directs to the WAA Help page (#2 below), which Google has already produced.

Google will produce various versions of the disclosures and identify each by Bates and effective date as we've done for other disclosures, to the extent various versions and effective dates are available in the code database.

Does that resolve our dispute?

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**From:** Ryan Sila <RSila@susmangodfrey.com>  
**Sent:** Monday, November 7, 2022 8:13 PM  
**To:** Arakaki, Lori <LArakaki@willkie.com>; Alex Frawley <AFrawley@susmangodfrey.com>; WAAGOOGLTEAM@LISTS.SUSMANGODFREY.COM  
**Cc:** FIREBASE-WFGE <FIREBASE-WFGE@willkie.com>  
**Subject:** RE: Rodriguez: Google's Suppl. Interrogatory Response Set Three and Ma Verifications

\*\*\* EXTERNAL EMAIL \*\*\*

Thanks, Lori. I think we're almost there, but we have a couple of quick clarifying questions.

First, in your initial email below, you mentioned that the relevant portion of Screen 1 has remained the same throughout the Class Period. What about Screens 2 and 3 from the same paragraph in the Third Amended Complaint?

And second, Google will both produce the various versions of these disclosures and also identify them by Bates/provide their effective dates, correct?

---

**From:** Arakaki, Lori <[LArakaki@willkie.com](mailto:LArakaki@willkie.com)>  
**Sent:** Monday, November 7, 2022 11:03 PM  
**To:** Ryan Sila <[RSila@susmangodfrey.com](mailto:RSila@susmangodfrey.com)>; Alex Frawley <[AFrawley@susmangodfrey.com](mailto:AFrawley@susmangodfrey.com)>;  
[WAAGOOGLTEAM@LISTS.SUSMANGODFREY.COM](mailto:WAAGOOGLTEAM@LISTS.SUSMANGODFREY.COM)  
**Cc:** FIREBASE-WFGE <[FIREBASE-WFGE@willkie.com](mailto:FIREBASE-WFGE@willkie.com)>  
**Subject:** RE: Rodriguez: Google's Suppl. Interrogatory Response Set Three and Ma Verifications

**EXTERNAL Email**

Thanks, Ryan. Google will produce the language from the static portions of the pages at Numbers 3, 6, and 7 below.

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---

**From:** Ryan Sila <[RSila@susmangodfrey.com](mailto:RSila@susmangodfrey.com)>  
**Sent:** Monday, November 7, 2022 4:53 PM  
**To:** Arakaki, Lori <[LArakaki@willkie.com](mailto:LArakaki@willkie.com)>; Alex Frawley <[AFrawley@susmangodfrey.com](mailto:AFrawley@susmangodfrey.com)>;  
[WAAGOOGLTEAM@LISTS.SUSMANGODFREY.COM](mailto:WAAGOOGLTEAM@LISTS.SUSMANGODFREY.COM)  
**Cc:** FIREBASE-WFGE <[FIREBASE-WFGE@willkie.com](mailto:FIREBASE-WFGE@willkie.com)>  
**Subject:** RE: Rodriguez: Google's Suppl. Interrogatory Response Set Three and Ma Verifications

\*\*\* **EXTERNAL EMAIL** \*\*\*

Thank you, Lori. We appreciate your response, but we think there's still a gap in production.

The "dynamic page[s]" you reference below contain relevant text that does not change by user. To take just one example, <https://myactivity.google.com/activitycontrols/webandapp> contains text that reads:

*"Your Web & App Activity includes the things you do on Google services, like Maps, Search, and Play. It can also include things you do on sites, apps, and devices that use Google services or your voice and audio recordings. The activity you keep is used to give you more personalized experiences, like faster searches and more helpful app and content recommendations. You can see your activity, delete it manually, or choose to delete it automatically using the controls on this page. [Learn more](#)"*

We are interested in any version of that text that has appeared on this page throughout the Class Period.

We are also interested in the text that accompanies the settings, even if that text depends on setting state. For example, when WAA is off, the setting reads:

*"Not saving activity  
Your Web & App Activity is off"*

Will Google produce all versions of those disclosures?

Thanks,  
Ryan



**From:** Arakaki, Lori <[LArakaki@willkie.com](mailto:LArakaki@willkie.com)>  
**Sent:** Monday, November 7, 2022 7:26 PM  
**To:** Ryan Sila <[RSila@susmangodfrey.com](mailto:RSila@susmangodfrey.com)>; Alex Frawley <[AFrawley@susmangodfrey.com](mailto:AFrawley@susmangodfrey.com)>;  
[WAAGOOGLTEAM@LISTS.SUSMANGODFREY.COM](mailto:WAAGOOGLTEAM@LISTS.SUSMANGODFREY.COM)  
**Cc:** FIREBASE-WFGE <[FIREBASE-WFGE@willkie.com](mailto:FIREBASE-WFGE@willkie.com)>  
**Subject:** RE: Rodriguez: Google's Suppl. Interrogatory Response Set Three and Ma Verifications

**EXTERNAL Email**

Ryan,

We do not think this brief is necessary. Google has already produced much of the requested information and is in the process of searching its code for the remaining information it can reasonably identify. Google will provide the below information requested by Plaintiffs. We think this moots the request in this brief. Please let us know if you think otherwise.

1. Google Terms of Service: Google has already produced all versions of its Terms of Service and has identified those versions in its supplemental interrogatory response.
2. WAA help page (titled "See & control your Web & App Activity" or "Find & control your Web & App Activity"): Google has already produced all versions of the WAA Help Page and will supplement its responses to Interrogatory Nos. 6-8 to reflect the effective dates of each page.
3. "Activity Controls" page. This is a dynamic page that changes depending on the user.
4. "Activity Controls" page pop-ups. Google will produce the versions of the pop-ups viewable from the Activity Controls page that it is able to identify from its code, and Google will identify effective dates to the extent possible.
5. Android setting screenshots (identified in Paragraph 76 of Plaintiffs' Third Amended Complaint, Dkt. 138). The only portion of Screen 1 that is relevant is the "Activity controls" string. The "Activity controls" portion of the setting screen has always used the language visible in Screen 1: "Choose the activities and info you allow Google to save."
6. "Manage all Web & App Activity" link (at the bottom of the "Activity Controls" page) is a link to <https://myactivity.google.com/activitycontrols/webandapp>, which is a dynamic page.
7. Google "Data & Privacy" page. This is a dynamic page that changes depending on the user.

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**From:** Ryan Sila <[RSila@susmangodfrey.com](mailto:RSila@susmangodfrey.com)>  
**Sent:** Monday, November 7, 2022 11:21 AM  
**To:** Alex Frawley <[AFrawley@susmangodfrey.com](mailto:AFrawley@susmangodfrey.com)>; Santacana, Eduardo E. <[0000003f22e5a9f4-dmarc-request@LISTS.SUSMANGODFREY.COM](mailto:0000003f22e5a9f4-dmarc-request@LISTS.SUSMANGODFREY.COM)>; Arakaki, Lori <[0000004dc44ba383-dmarc-request@LISTS.SUSMANGODFREY.COM](mailto:0000004dc44ba383-dmarc-request@LISTS.SUSMANGODFREY.COM)>; [WAAGOOGLTEAM@LISTS.SUSMANGODFREY.COM](mailto:WAAGOOGLTEAM@LISTS.SUSMANGODFREY.COM)  
**Cc:** FIREBASE-WFGE <[FIREBASE-WFGE@willkie.com](mailto:FIREBASE-WFGE@willkie.com)>  
**Subject:** RE: Rodriguez: Google's Suppl. Interrogatory Response Set Three and Ma Verifications

\*\*\* EXTERNAL EMAIL \*\*\*

Counsel,

We haven't heard back from you about interrogatories 6-8, so we prepared the attached letter-brief. As Alex mentioned, we need to file this tonight unless Google commits to providing the information requested.

Thanks,  
Ryan

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**From:** Alex Frawley <[AFrawley@susmangodfrey.com](mailto:AFrawley@susmangodfrey.com)>  
**Sent:** Tuesday, November 1, 2022 7:53 PM  
**To:** Santacana, Eduardo E. <[0000003f22e5a9f4-dmarc-request@LISTS.SUSMANGODFREY.COM](mailto:0000003f22e5a9f4-dmarc-request@LISTS.SUSMANGODFREY.COM)>; Ryan Sila <[RSila@susmangodfrey.com](mailto:RSila@susmangodfrey.com)>; Arakaki, Lori <[0000004dc44ba383-dmarc-request@LISTS.SUSMANGODFREY.COM](mailto:0000004dc44ba383-dmarc-request@LISTS.SUSMANGODFREY.COM)>; [WAAGOOGLTEAM@LISTS.SUSMANGODFREY.COM](mailto:WAAGOOGLTEAM@LISTS.SUSMANGODFREY.COM)  
**Cc:** FIREBASE-WFGE <[FIREBASE-WFGE@willkie.com](mailto:FIREBASE-WFGE@willkie.com)>  
**Subject:** RE: Rodriguez: Google's Suppl. Interrogatory Response Set Three and Ma Verifications

Eduardo,

The attached email exchange and Ryan's email below details what we are asking for here. In short, for the disclosures Plaintiffs have identified, we are asking Google to list by Bates number the date range for each version of that disclosure. We agree that timing is not of the essence in terms of Plaintiffs receiving this information. But we need a commitment that Google will provide the information requested, or else we will need to move to compel it by next Monday's deadline. Please let us know.

Best,  
Alex

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**From:** [owner-waagoogleteam@lists.susmangodfrey.com](mailto:owner-waagoogleteam@lists.susmangodfrey.com) <[owner-waagoogleteam@lists.susmangodfrey.com](mailto:owner-waagoogleteam@lists.susmangodfrey.com)> **On Behalf Of** Santacana, Eduardo E.  
**Sent:** Tuesday, November 1, 2022 2:01 AM  
**To:** Ryan Sila <[RSila@susmangodfrey.com](mailto:RSila@susmangodfrey.com)>; Arakaki, Lori <[0000004dc44ba383-dmarc-request@LISTS.SUSMANGODFREY.COM](mailto:0000004dc44ba383-dmarc-request@LISTS.SUSMANGODFREY.COM)>; [WAAGOOGLTEAM@LISTS.SUSMANGODFREY.COM](mailto:WAAGOOGLTEAM@LISTS.SUSMANGODFREY.COM)  
**Cc:** FIREBASE-WFGE <[FIREBASE-WFGE@willkie.com](mailto:FIREBASE-WFGE@willkie.com)>  
**Subject:** RE: Rodriguez: Google's Suppl. Interrogatory Response Set Three and Ma Verifications

**EXTERNAL Email**

Ryan,

We are serving another supplement to these today to correct an error Mr. Mao brought to our attention on Friday. We are also in the midst of a code search to find accurate versions of these documents that became live after this case was filed, and we will supplement again with those as soon as we can. Per our separate correspondence with Alex, we understand that this post-fact-discovery supplementation will be fine because its purpose is simply to provide the parties with common evidence on which terms and disclosures were in place when. We will add in the October 4, 2022 Privacy Policy into that supplement, which is the only new version since February.

Thanks,  
Eduardo



Eduardo E. Santacana  
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Pronouns: he, him, his

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From: Ryan Sila <[RSila@susmangodfrey.com](mailto:RSila@susmangodfrey.com)>  
Sent: Monday, October 31, 2022 3:20 PM  
To: Arakaki, Lori <[0000004dc44ba383-dmarc-request@LISTS.SUSMANGODFREY.COM](mailto:0000004dc44ba383-dmarc-request@LISTS.SUSMANGODFREY.COM)>;  
[WAAGOOGLETEAM@LISTS.SUSMANGODFREY.COM](mailto:WAAGOOGLETEAM@LISTS.SUSMANGODFREY.COM)  
Cc: FIREBASE-WFGE <[FIREBASE-WFGE@willkie.com](mailto:FIREBASE-WFGE@willkie.com)>  
Subject: RE: Rodriguez: Google's Suppl. Interrogatory Response Set Three and Ma Verifications

\*\*\* EXTERNAL EMAIL \*\*\*

Counsel,

On Thursday, October 27, Google supplemented its responses to Plaintiffs' interrogatories 6-8, which generally require Google to produce and identify various public disclosures. Google's supplemental responses are deficient in several respects.

First, Google's supplemental responses do not refer to any disclosures to developers except for the privacy policy. Google has not provided a comprehensive list of the various versions of the Terms of Service for Firebase Services, the Google Analytics for Firebase Terms, the Google Analytics for Firebase Use Policy, the page titled "How Google Uses Information from Sites or Apps that Use Our Services," terms relating to AdMob, or other disclosures and agreements that Google may make to or with developers.

Second, Google also has not provided a comprehensive list of the various versions of agreements and disclosures that Google makes to or with users. Google's supplemental disclosures refer to the privacy policy but do not refer to the Google Terms of Service, the "Activity controls" page, the pop-up pages on the "Activity controls" page, Screens 1-3 in paragraph 76 of the Third Amended Complaint, the "Find & Control Your Web & App Activity" page, the "Manage all Web & App Activity" page, and the "Data & privacy" page within "Google Account."

Third, Google's supplemental responses are incorrect even on their own terms. The supplemental responses disclose three updates to Google's privacy policy, with the last one being February 10, 2022. According to Google's website, the privacy policy was last updated on October 4, 2022.

Plaintiffs asked Google to supplement its interrogatories with this information on September 26, and on October 12 Google responded that it had "put a lot of work into these requests, . . . are almost done" and "are working hard to get reasonably close" to fulfilling this request (correspondence attached). But now Google has simply produced and listed the three publicly available versions of the privacy policy.

Please promptly provide a comprehensive list of each and every version of Google's disclosures to and agreements with developers and users regarding the practices at issue in this litigation, along with associated Bates numbers and the dates on which each version was effective. If Google refuses to answer these interrogatories, we need to raise this issue with Judge Tse before the November 7 deadline.

Thanks,  
Ryan

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**From:** [owner-waagoogleteam@lists.susmangodfrey.com](mailto:owner-waagoogleteam@lists.susmangodfrey.com) <[owner-waagoogleteam@lists.susmangodfrey.com](mailto:owner-waagoogleteam@lists.susmangodfrey.com)> **On Behalf Of** Arakaki, Lori  
**Sent:** Thursday, October 27, 2022 6:39 PM  
**To:** [WAAGOOGLTEAM@LISTS.SUSMANGODFREY.COM](mailto:WAAGOOGLTEAM@LISTS.SUSMANGODFREY.COM)  
**Cc:** FIREBASE-WFGE <[FIREBASE-WFGE@willkie.com](mailto:FIREBASE-WFGE@willkie.com)>  
**Subject:** Rodriguez: Google's Suppl. Interrogatory Response Set Three and Ma Verifications

**EXTERNAL Email**

Counsel,

Attached please find Google's supplemental responses to Plaintiffs' Interrogatories Set Three, as well as a verification for Google's supplemental response to Plaintiffs' Interrogatories Set Three.

Thanks,  
Lori

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